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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

Tiffany Edmonds

Petitioner

-vs-

State of Indiana

Respondent

On Petition for Writ of Certiorari
To The Indiana Court of Appeals

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QUESTION PRESENTED

Did the Indiana Court of Appeals' opinion affirming the trial court's admission of Edmonds' statement sufficient depart from the procedural safeguards instituted in *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) and *Edwards v. Arizona,* 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) to protect the right against "self-incrimination" when in concluded that Edmonds', "yes" response to the question, "[d]o you wish to have an attorney at this time?", was ambiguous and further inquiry in a non-coercive manner was permitted when the interrogator believed that Edmonds may be mistaken in her "yes" response?

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PETITION FOR WRIT OF CERTIORARI

OPINONS BELOW

The opinion of the Indiana Court of Appeals that is appealed is reported as *Tiffany Edmonds v. State of Indiana,* 840 N.E.2d 456 (2006), *trans. den.*

JURISDICTION

The Court's opinion under appeal was entered on January 18, 2006. A timely Petition of Transfer was filed on February 17, 2006 and was denied on March 21, 2006. Both the order denying transfer by the Indiana Supreme Court and the Court of Appeals decision are attached in the Appendix.

CONSTITUTIONAL PROVISIONS INVOLVED

"[N]or shall be compelled in any criminal case to be a witness against himself;" U.S. Constitution, Amend. V

"In all criminal prosecutions, the accused shall enjoy the right - to have the Assistance of Counsel for his defence." U.S. Constitution, Amend. VI.

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amend. XIV.

I. STATEMENT OF THE CASE

A. INTRODUCTION

Tiffany Edmonds (hereinafter "Edmonds") was advised of her "Miranda rights". After being advised of these rights, Edmonds needed to complete a waiver form relinquishing these rights. One question of the form stated, "Do you wish to have an attorney at this time?", and Edmonds wrote "yes". After Edmonds wrote "yes", Detective Williams (hereinafter "Williams") questioned Edmonds about the response. Edmonds, subsequently, changed her "yes" response to "no". Williams, then, obtained an incriminating statement from

Edmonds. Edmonds challenged the admission of this statement.

Edmonds contends that she clearly and unequivocally invoked her right to an attorney. After such an invocation, Edmonds contends that all questioning should have ceased until an attorney was provided and any subsequent statement was involuntary and therefore inadmissible. The Indiana Court of Appeals held that the "yes" response was ambiguous, based upon Williams past experiences from questioning suspects who would often change their answer to this question when he further questioned them about a "yes" response, so it was objectively reasonable to clarify this "yes" response. Edmonds would contend that the Indiana Court of Appeals disregarded a "bright line" rule of this Court laid out in *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378, (1981) by using a subjective test as opposed to an objective test. This Court should grant Edmonds Petition for Writ of Certiorari from the Indiana Supreme Court to correct an erroneous interpretation of this Court's well established precedent.

B. FACTS AND PROCEDURAL HISTORY

On the evening of November 29, 2003, Carlos Ruiz went to a strip club in Gary, Indiana. While at the club, Ruiz met a dancer, who called herself "Jane", and bought her a drink. In addition, he paid her to perform a lap dance for him. When Ruiz purchased the drink and lap dance, he pulled out approximately $900 in cash.

Ruiz and "Jane" agreed to meet after work at Ruiz's motel room. Ruiz provided "Jane" with his cell phone number. Ruiz left the strip club and returned to his motel room in Michigan City, Indiana.

After her shift, "Jane" called Ruiz early that morning wanting to meet him. "Jane" arrived at the motel and Ruiz had her come into his room. When she was in the room, Ruiz claimed that "Jane" was attempting to prevent the door from

closing.[1] "Jane" wanted something cold to drink and suggested that they retrieve ice from down the hall. When they left the room, Ruiz claimed "Jane" attempted, again, to prevent the door from closing. They walked down the hall to retrieve the ice and returned to the room. Once again, "Jane" attempted to prevent the door from closing.

Once they were back in the motel room, an unknown male barged into the room with a gun. The man was shouting at Ruiz and ordered him into the bathtub. The unidentified man duct taped Ruiz's hands behind his back and struck him several times aside the head with the gun. The man was shouting at "Jane" to "get everything, bitch".

Ruiz heard the man and "Jane" leave and he was able to pull himself out of the tub and go outside. Another patron of the motel saw Ruiz and summoned police.

When the police arrived, Ruiz told them that he had heard a knock on his door and he thought that it was the maid. When he looked through the peep hole, he saw a female that he thought was a maid and when he opened the door a male barged into the room that must have been hiding out of his sight. The man and woman entered the room together and robbed him.

Ruiz was taken to the hospital. After he was at the hospital, he advised the officer that he wanted to change his story. Ruiz advised that the female was a stripper that he had met at a club that night and he had her invited her to his motel room. However, he maintained the part that when he looked through the peep hole he saw "Jane" and when he opened the door another unknown male barged into the room and robbed him. Ruiz never told the police "Jane" had actually been in his room when the unknown male barged

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[1]The doors to the motel room automatically locked when closed.

into the room. At trial, Ruiz contended that he had changed this part of the story, because he was afraid what people might think about him having a stripper in his motel room.

The police went to the club and learned that "Jane" was actually Tiffany Edmonds. The police attempted to contact her, but were unsuccessful. Prior to Edmonds arrest, Williams did a background check and learned that Vincent Tillotson had been arrested with her for a robbery charge in Wisconsin. As a result, Williams obtained a picture of Tillotson to place in his file regarding this investigation. The police charged Edmonds with Robbery, as a Class B felony, and Criminal Confinement, as a Class B felony.

Later, Edmonds was arrested on the warrant and brought to the Laporte County jail. Detective Williams and Litchford had her summoned from her cell to an interview room. The interview room was equipped with recording equipment and Williams also had a hand held recorder. However, the detectives did not tape the initial interrogation.

Williams told Edmonds about the charges filed against her and that they were there to speak with her about them. He indicated that before they could speak with her that they needed to advise her of her rights. Edmonds said that was "fine". At this point, Edmonds did not demand an attorney.

Prior to any interrogation, the detectives review a standard form with all suspects which is entitled "LaPorte County Prosecuting Attorney's Office Constitutional Rights Form". [App. pp. 18-19.] This form consists of two parts, which include an advisement section and a waiver section. [Id.] The advisement section consists of five enumerated sentences which the suspect must read while the officer simultaneously reads aloud. [Id.] After each sentence, the suspect is directed to place his or her initials on the space provided to acknowledge same. [Id.] The first four enumerated sentences are the "Miranda rights". The fifth

enumerated sentence states, "You can decide, at any time, to exercise these rights and not answer any questions or make any statements."

The bottom portion has a heading entitled, "Constitutional Rights Waiver". The directions indicate that the person should write "yes" or "no" next to each question in the space provided after the suspects reads each question and it has been read by the detective. There is five enumerated questions which are:

1. Have you read the above statements of your constitutional rights and have they been read to you? _____

2. Do you understand each of these rights? _____

3. Do you wish to have an attorney at this time? _____

4. Has any force, threats or promises of any kind or nature been used by anyone to influence you to waive these rights? _____

5. Are you willing to talk with the police? _____

[App. p. 19.]

Detective Williams read each of the enumerated sentences to Edmonds as she followed along under the top or advisement portion. She placed her initials next to each of the sentences in the advisement section acknowledging that each of her rights had been read to her.

After the top portion was completed, Edmonds was willing to answer "yes" or "no" to questions on the bottom or waiver portion. Edmonds wrote "yes" next to the first two

enumerated questions. Williams assumed the hand written answer of "yes" was self-explanatory. After she read the third question and it was read aloud to her by Williams, she wrote "yes" next to the question which stated, "Do you wish to have an attorney at this time?". After this response, Williams did not terminate the interrogation or provide Edmonds an attorney; instead, he asked "you do want an attorney before you speak to the police." Edmonds, then, said "no". At that point, Williams instructed Edmonds to write "no", cross out the "yes", and place her initials next to it.

Williams admitted that the answer "yes" to the question "Do you wish to have an attorney at this time?" meant that the person wanted an attorney. [App. p. 35.] Williams never provided an attorney to Edmonds. [App. p. 37.] Williams contended that he thought Edmonds wanted to speak with him up to that point and that she may have been mistaken in her response to question number three. He thought that the waiver section was confusing and she may have become complacent and answered "yes" next to question number three after having written "yes" next to questions number one and two.

When using this waiver form in the past with other suspects, Williams had questioned other suspects about a "yes" response to question number three and the other suspects subsequently change their answer to "no". Williams concluded from this experience that the suspects must simply have become complacent after writing "yes" to questions one and two, so they mistakenly wrote "yes" next to question number three. Based upon this past experience, Williams had adopted a policy of always questioning suspects about a "yes" response to question number three in order to obtain their true intent. However, Williams admitted that he could not read any suspect's mind and he had never questioned suspects about their answers to any of the other questions on the

waiver form.

After Williams questioned Edmonds about her response to question number three and Edmonds changed her answer, Williams continued down the waiver section through questions four and five. Williams did not question Edmonds about her hand written responses to questions four and five. Williams understood all of Edmonds other answers to be self-explanatory.

While Williams believed that there was often problems with question number three, it was always his policy to never record the process of going over the waiver form. Williams contended that he did not use any coercion when questioning Edmonds or anyone else about their response to question number three.

After he went over the form, Williams spoke with Edmonds for about thirty minutes without recording the initial interview. After the thirty minutes, Williams turned on a tape recorder and interviewed Edmonds. Before beginning the recorded interview, Williams advised Edmonds again of her "Miranda rights" and elicited a waiver from her of those rights.

Edmonds advised Williams of her age and that she had only completed the seventh grade. Edmonds denied knowing that the unidentified individual was going to rob Ruiz. However, Edmonds indicated that she knew the unidentified individual. Edmonds admitted to meeting with the individual and using drugs with him before going to Ruiz's motel room. Further, Edmonds indicated that the unidentified male drove Edmonds' mother's vehicle to the motel and that she left with him after the incident.

Edmonds identified the male as Vincent Tillotson. At the time of the interview, Williams had Tillotson's picture in the file in the interview room during the interrogation. Later, it was determined that Tillotson was incarcerated at the time of the incident and could not have been the person that

robbed Ruiz. Williams, also, contended that it was Edmonds that had brought up Tillotson and that he did not lead her into identifying him. However, Williams did not record this part of the interview.

The trial court ordered discovery soon after the charges were filed. The state provided counsel for the defendant with some discovery, but did not provide the "LaPorte County Prosecuting Attorney's Office Constitution Rights Form" until seven days before the trial. After receiving this form, Edmonds filed a motion to suppress her statement. [App., pp. 13-17.] The trial court heard arguments about this motion after jury selection. [App. pp. 20-50.] The trial court denied the motion to suppress and the statement was admitted at Edmond's trial over her objection. [App. pp. 50-51.]

Edmonds was found guilty of Robbery, as a Class B felony and Criminal Confinement, as a Class B felony. [App. 52-53.] The trial court sentenced her to the presumptive sentence of ten (10) years on each count and ordered the sentences to be served consecutively.

Edmonds appealed contending that the trial court erred when it permitted the state to introdu her statement in contravention of her Fifth and Sixth Amendment rights to the United States Constitution and when it ordered her sentences to be served consecutively. The Court of Appeals affirmed in part and reversed in part. [App., pp. 3-12.] The Court of Appeals did not believe that it was an abuse of discretion to admit Edmonds' statement which was obtained after she wrote "yes" next to the question "Do you wish to have an attorney at this time?". However, the Court of Appeals did reverse the sentencing order and ordered the sentences be served concurrently. Edmonds filed a timely petition for transfer with the Indiana Supreme Court requesting they exercise their discretionary review and this petition was denied on March 21, 2006. [App. pp. 1-2.]

II. ARGUMENT

Edmonds contends that the trial court erred when it admitted her statement after she invoked her right to an attorney when Williams was attempting to obtain a waiver of her "Miranda rights" in contravention of *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). Once a suspect invokes her right to an attorney, all questioning must cease until an attorney is present. [*McNeil v. Wisconsin*, 501 U.S. 171, 177, 111 S.Ct. 2204, 115 L.Ed.2d. 158 (1991). If the police do initiate an encounter and no attorney is present, the suspect's statement are presumed involuntary and therefore inadmissible as substantive evidence at trial. [*Id.*] Whether a suspect's words constitute a request for an attorney is a legal determination reviewed de novo. [*Robinson v. Borg*, 918 F.2d 1387, 1390 (9th Cir. 1995); *Smith v. Illinois*, 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984).]

The Fifth and Fourteenth Amendment protect a suspect from becoming a witness against himself and to the assistance of an attorney during custodial interrogation.[2] [*Miranda v. Arizona*, 384 U.S. 436, 439, 86 S.Ct. 1602, 16 L.Ed.2d 694(1966).] This Court was concerned that the Constitution not become a "form of words", so it held that

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[2] The Sixth Amendment also guarantees a person the assistance of an attorney at all critical stages after the filing of charges. [*Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977).] During or prior to custodial interrogations, a person must invoke his right to an attorney under the Sixth Amendment as well. [*Michigan v. Jackson*, 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986).] The determination whether a person has invoked his right to an attorney under the Sixth Amendment is the same as the Fifth Amendment. [*Michigan v. Harvey*, 494 U.S. 344, 110 S.Ct. 1176, 108 L.Ed2d 293 (1990).] Edmonds would contend that her arguments raised throughout this Petition that she invoked her right to an attorney under the Fifth Amendment also means that she invoked her right to an attorney under the Sixth Amendment to the U.S. Constitution as well.

procedural safeguards must be in place to secure the privilege against self-incrimination. [*Id.* at 444.] Those procedural safeguards established that the admissibility in evidence of any statement given during custodial interrogation of a suspect would depend on whether the police provided the suspect with four warnings. [*Dickerson v. United States,* 530 U.S. 428, 435, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000).] These warnings (which have come been known as the "Miranda rights" and which will be referred to as same throughout this brief) are: a suspect has a right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed to him at no cost. [*Id.*] After being advised of the "Miranda rights, the accused must knowingly and voluntarily waive those rights before a statement will be admissible. [*North Carolina v. Butler,* 441 U.S. 369, 373, 108 S.Ct. 2389, 101 L.Ed.2d 197 (1979).]

In *Edwards v. Arizona,* 451 U.S. 477 (1966), this Court added an additional layer of protection which required that the police cease all further questioning when the accused invokes his or her right to an attorney. This rule was based upon this Court's perception that an attorney occupies a critical position in our legal system because of his unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation. [*Fare v. Michael C.,* 442 U.S. 707, 719, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979).] Moreover, the attorney's presence helps guard against overreaching by the police and ensures that any statement, if given, is accurately transcribed for presentation into evidence. [*Id.,* at 719.]

The U.S. Supreme Court has emphasized the virtues of a bright-line rule in cases following *Edwards* as well as *Miranda.* [*Arizona v. Roberson,* 486 U.S. 675, 681, 108 S.Ct. 2093, 100 L.Ed.2d 704 (1988).] This bright-line rule that all

questioning must cease upon a request for an attorney has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogations, and of informing courts under what circumstances statements obtained during such custodial interrogations are not admissible. [*Fare v. Michael C.*, 442 U.S. at 718.] This gain in specificity, which benefits the accused and the State alike, has been thought to outweigh the burdens that the decision in *Miranda* and *Edwards* imposes on law enforcement agencies and the courts by requiring the suppression of trustworthy and highly probative evidence even though the confessions may be voluntary under traditional Fifth Amendment analysis. [*Roberson*, at 681-682.]

A. EDMONDS INVOKED HER RIGHT TO AN ATTORNEY

A court must take an objective approach to determine whether the accused has invoked her right to an attorney. [*Davis v. U.S.*, 512 U.S. 452, 458-459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994).] Invocation of the right to an attorney requires some statement that can reasonably be construed to be an expression or desire for an attorney. [*Davis*, at 459.] A request for an attorney should be broadly interpreted. [*Michigan v. Jackson*, 475 U.S. at 633.] However, interpretation is only required where the suspect's words, understood as ordinary people would understand them, are ambiguous. [*Connecticut v. Barrett*, 479 U.S. 523, 529, 107 S.Ct. 828, 93 L.Ed.2d 920 (1987).] A response either is or is not a request for an attorney. [*Smith v. Illinois*, 469 U.S. 91, 97-98, 105 S.Ct. 490, 83L.Ed.2d 488 (1984).]

This Court has found that the response of "uh, yeah. I'd like to do that." to the question "You have a right to consult with and lawyer and have a lawyer present with you when you're being questioned. Do you understand that?" was a request for an attorney and any statement obtained in violation of that request was inadmissible. [*Smith v. Illinois*,

469 U.S. at 96.] In *Smith,* the defendant was arrested for a robbery. After his arrest, he was brought down to an interview room for an interrogation. Prior to any questioning, the detective was advising the defendant of his "Miranda rights". During the advisement, the detective stated, "You have the right to consult with an attorney and have a lawyer present with you when you're being questioned. Do you understand that?" and the defendant stated, " Uh, yeah, I'd like to do that.". At this point, the detective did not terminate the questioning and continued to advise the defendant of his "Miranda rights". After the detective completed reading the full "Miranda rights", the following colloquy occurred:

Q: Do you wish to talk to me at this time without a lawyer being present?

A: Yeah and no, uh, I don't know what's what really.

Q: Well. You either have [to agree] to talk to me this time without a lawyer being present and if you do agree to talk with me without a lawyer being present you can stop at any time you want to.

A: All right. I'll talk to you then.

The defendant provided the detective with a statement. Initially, the defendant advised the police he knew about the planned robbery, but was not a participant. After further questioning, he claimed that he had did it. Later, he returned to his original story.

The defendant attempted to suppress his statement. The trial court denied the motion and his statement was admitted at trial over his objection. The defendant was found guilty and he appealed. The Illinois Court of Appeals and Supreme Court affirmed. This Court granted a writ of certiorari.

This Court held that the defendant had unambiguously invoked his right to an attorney and his statement should not have been admitted. [*Smith,* at 97-98.] This court reasoned that there was nothing ambiguous about his response to the

police when advised of his right to an attorney. [*Id.*] When a suspect invokes his right to an attorney, all questioning must cease unless the suspect reinitiates communication. [*Id.*] Further, the court reasoned that subsequent responses from a suspect to police initiated questioning after an invocation cannot be used to create an ambiguity. [*Id.*]

The defendant in *Smith* clearly invoked his right to an attorney when advised of his right to have an attorney. After invoking this right, the detective continued to advise the defendant of his "Miranda rights" and then questioned him about waiving those rights.[3] His subsequent responses to inquiries about waiving his "Miranda rights" were used to create an ambiguity by the Illinois courts. However, this Court made it clear that was impermissible.

This Court made it clear that *Edwards* established a "bright line" rule. [*Id.* at 98] In the absence of such a bright line prohibition, the authorities through "badgering" or "overreaching" –explicit or subtle, deliberate or unintentional–might wear down the accused and persuade him or her to incriminate himself or herself notwithstanding the earlier request for an attorney. [*Id.*] "Using an accused's

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[3]In the late Chief Justice Rehnquist's dissenting opinion, he pointed out that the invocation occurred while the officer was advising the suspect of his "Miranda rights" and the officer was not questioning the suspect. He pointed out that the officer should have been able to finish reading those rights to the suspect so that he fully understood and appreciated them before the suspect determined whether to invoke them. After the suspect had been fully advised of his "Miranda rights", the suspect chose to waive them.

subsequent responses to cast doubt on the adequacy of the initial request itself is even more intolerable. No authority, and no logic, permits the interrogator to proceed.... on his own terms and as if the defendant had requested nothing, in the hope that the defendant might be induced to say something casting retrospective doubt on his initial statement that he wished to speak with an attorney or not at all." [*Smith*, at 98-99.]

Like the Illinois Appellate Courts, the Indiana Court of Appeals clearly erred when it considered Edmonds' subsequent responses to police questions after her answer of "yes" to the question "Do you wish to have an attorney at this time?".[4] No reasonable person could have concluded that "yes" means anything other than "yes".[5] Further, Williams admitted that he understood "yes" and "no" responses to be self-explanatory. Williams admitted that the response of "yes" to the question, "Do you wish to have an attorney at this time?" means that a person wanted an attorney. Any subsequent responses to Williams questions regarding her initial response to this question cannot be considered in accordance with this Court's holding in *Smith*. The trial court and Court of Appeals cannot consider the changes

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[4]Edmonds response of "yes" to the question "Do you wish to have an attorney at this time?" occurred after she had been fully advised of her "Miranda rights". Unlike the comment made by the suspect in *Smith* when being read his "Miranda rights", Edmonds had been fully advised of her "Miranda rights" and when directly questioned about her desire for an attorney she expressly invoked her right to an attorney. Even under the late Chief Justice Rehnquist's dissent, Edmonds invoked her right to an attorney. If Edmonds' factual situation were before this Court when *Smith* was decided, the opinion may very well have been unanimous.

[5]The Maryland Court of Appeals has concluded that "no" means "no" and such a request is unambiguous. [*Billups v. State*, 135 Md.App. 345, 762 A.2d 609 (Md.Ct.App. 2000).]

Edmonds made on the waiver form. No authority, no logic would permit such a practice. Without this evidence, the state cannot meet its burden that Edmonds waived her right to an attorney and her subsequent statement must be suppressed.

The State of Indiana and the Court of Appeals contended that this case was distinguishable from *Smith* based upon the fact that they were claiming there were other ambiguities in addition to her subsequent response in changing her answer from "yes" to "no". This Court made it clear that its holding in *Smith v. Illinois* was narrow and did not address the circumstances in which a request would be characterized as ambiguous as a result of preceding events or the request itself, nor the consequences of such a situation. [*Id.*, at 99.] Further, this Court indicated that ambiguities can occur in statements made by the suspect preceding the request for counsel or in the request itself. [*Id.*, at 96.]

B. NO SUBJECTIVE BASIS CAN BE USED TO CLARIFY EDMONDS' UNAMBIGUOUS REQUEST FOR AN ATTORNEY.

The Indiana Court of Appeals did not contend that there was any ambiguity in the request itself[6]; rather, the ambiguity was based upon events preceding the request for an attorney. The Indiana Court of Appeals contended that these preceding events were: 1.) Williams' belief that

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[6]Courts have often concluded that requests for counsel may be disregarded as equivocal when preceded by words such as "maybe" or other such phrases which only indicate that the suspect is thinking about obtaining counsel. [*See, Davis*, at 462, (holding "maybe I should talk to a lawyer" to be equivocal); *Robtoy v. Kincheloe*, 871 F.2d 1478, 1479 (9th Cir. 1989), (holding "maybe I should call by attorney" to be equivocal); *Ledbetter v. Edwards*, 35 F.3d 1062, 1069 (6th Cir. 1994) (holding "it would be nice to have an attorney" to be equivocal). Unlike these requests for an attorney, Edmonds request was not preceded with any modifier that would lead any reasonable person to believe that her request itself was ambiguous.

Edmonds wanted to talk with him prior to the her request for an attorney; and 2.) Williams' belief that Edmonds was complacent and mistakenly wrote "yes" to the question which was based upon Williams' past experiences with other suspects when going over the Laporte County Prosecutor's Waiver Form. Edmonds contends that neither event created any ambiguity necessitating clarifying her unambiguous request and will address each contention below.

After this Court reversed the Illinois Supreme Court in *Smith v. Illinois,* the Illinois Supreme Court dealt with a case very similar as Edmonds in *People v. St. Pierre,* 522 N.E.2d 61 (Ill. 1988).] In *St. Pierre,* the defendant was arrested for a double homicide. When the defendant was arrested, he was advised of his "Miranda rights" on three separate occasions and he never invoked his right to an attorney. The defendant specifically advised the detective that he wanted to speak with him about the crime. The detective advised him that they had to wait until the state's attorney arrived. When the state's attorney arrived, the state's attorney advised the defendant of his "Miranda rights". Prior to answering any questions, the defendant responded "yes" about wanting an attorney. A court reporter transcribed what went on between the state's attorney and the defendant. The transcript indicates that the defendant stated "yes" about wanting an attorney. However, a clear reading of the entire transcript shows some ambiguity as to what the defendant wanted. At the end of the transcribed colloquy, it is clear that defendant agreed to talk without an attorney. The defendant provided an incriminating statement to the police which was admitted at his trial. The defendant was convicted and he appealed.

The Illinois Supreme Court reversed the conviction based upon the admission of the incriminating statement, because it concluded that the defendant had invoked his right to an attorney and all questioning should have ceased.

[*People v. St. Pierre*, at 68.] The court reasoned that it was improper to consider any of the defendant's subsequent responses to police initiated questioning after the defendant stated "yes" that he wanted an attorney based upon this Court's holding in *Smith*. [*Id.*, at 68.] The state contended that there was also an ambiguity based upon the defendant's statement to the detective that he wanted to provide a statement prior to the invocation. However, the court concluded that ambiguous statements or events that precede a request for an attorney only have relevance to the clarity of the request. [Id.] This conclusion was based upon this Court's holding in *Connecticut v. Barrett*, 479 U.S. 523, 529 that "interpretation is only required where the defendant's words, understood as ordinary people would understand them, are ambiguous." [*Id.*, at 68.] The Illinois Supreme Court held that the defendant's response spoke for itself regardless of his prior statement to the detective that he wanted to talk. [*Id.*]

While not mentioned by the Illinois Supreme Court, this Court has held that a suspect has the right to request an attorney at any time during or prior to an interrogation. [*Miranda v. Arizona*, 384 U.S., at 444-445.] The fact that a suspect initially indicates that he or she wants to speak with law enforcement without an attorney does not mean that he or she can't change his or her mind. Further, the suspect may not even know of the rights until he or she is advised. This Court's concern in adopting the procedural safeguard of advising suspects of their rights was to ensure that the right against self-incrimination was not just a form of words and a suspect understood his or her rights. It is very possible that once a suspect learns of the rights, he or she may decide to assert such rights. This was the basic of purpose of *Miranda* to allow an individual the choice to speak or remain silent.

Like the defendant in *St. Pierre*, Edmonds may not have objected when Williams read her the "Miranda rights".

However, her silence or acknowledgment of those rights does not necessarily mean Edmonds wanted to talk. Even if Edmonds initially indicated that she wanted to talk, this does not mean that she knew she had the right to be silent or to an attorney until she was so advised. Edmonds had the right to request an attorney or remain silent at any time. After being advised of her rights and before any questioning took place, Edmonds was asked whether she wanted an attorney and at which time she answered "yes". Edmonds response was unambiguous and unequivocal. No interpretation was necessary and any subjective belief on the interrogator's part up to that point as to whether Edmonds wanted to talk does not change the clarity of her "yes" response.

This Court has also emphasized that what is important is the spoken words between the interrogator and suspect and not the subjective beliefs of either party. In *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), this Court held that law enforcement officers interrogating a suspect in custody were not required to stop an interrogation when a suspect made an ambiguous or equivocal request for an attorney nor were said officers limited in asking clarifying questions to ascertain whether the suspect wanted to exercise his or her right to an attorney prior to proceeding with the interrogation. In so holding, this Court reasoned that the safeguards provided the suspect are the warnings themselves. [*Davis*, at 461.] Once the warnings are provided, it is an affirmative duty upon the suspect to clearly assert his right to an attorney. [*Id.*, at 460-461.] It is the objective words spoken by the suspect and interrogator. [*Id.*] While concurring with the result in *Davis*, Justice Souter noted that the holding adopted by this Court will unfortunately result in some suspects being denied their request for an attorney due to their linguistic skills. [*Id.*, at 472-476]

The Indiana Court of Appeals also believed that

Edmonds "yes" response was ambiguous, because of Williams past experiences in interrogations with this particular waiver form. Williams indicated in the past that suspects frequently wrote "yes" to the question, "Do you wish to have an attorney at this time?". After writing this "yes" response, it was usually his policy to question them about that response. Oftentimes, the suspect would change the "yes" to "no". Based upon these experiences, Williams concluded that suspects must have become complacent and simply wrote "yes" to this question after they had written "yes" to the preceding two questions. Williams concluded that this meant the suspect mistakenly wrote "yes" when he meant "no". Based upon Williams' past experiences, the Indiana Court of Appeals believed that Williams had an objectively good faith basis to ask non-coercive questions regarding a "yes" response to the question "Do you wish to have an attorney at this time?".

While Williams may believe a "yes" response was a mistake from his past experiences during interrogations, Edmonds would contend that Williams' policy of questioning suspects that wrote "yes" abrogated a "bright line" rule adopted by this Court and any changes to the "yes" response was not the result of a mistake, but the result of coercion inherent in the custodial interrogation process itself. [*See. Minnick v. Mississippi,* 498 U.S. 146, 150-151, 111 S.Ct. 486, 112 L.Ed.2d 489 (1990).] Under Williams policy, any suspect that answered "yes" to the question "Do you wish to have an attorney at this time?" would be questioned about that answer and would have to invoke his or right to counsel twice. This Court has held that a suspect only needed to invoke his right to an attorney one time and need not invoke it on subsequent occasions when the police continued questioning him or her. [*Arizona v. Roberson,* 486 U.S. at 684, (holding that a suspect need not invoke his right to an attorney for each investigation that officers want to

interrogate him on while in custody).] As Justice Souter noted in *Davis,* that when a suspect understands her desire for counsel to have been ignored in contravention of the rights just read to her, by her interrogator, that further objection may only be futile and confession (true or not) as the only way to end the interrogation. [*Davis v. United States,* 512 U.S. at 472-473, Justice Souter concurring.] *Edwards* was designed to prevent the police from badgering a defendant into waiving his previously asserted rights. [*Minnick v. Mississippi,* 498 U.S. at 150.] Williams' policy clearly abrogated the "bright line" rule enunciated in *Edwards* which required that all questioning cease upon a request for an attorney.

The Indiana Court of Appeals departed from this "bright line" rule when it concluded that it was acceptable for Williams to ask "non-coercive" questions about Edmonds' "yes" response. The only evidence as to non-coercive questioning was from Williams. While Edmonds did not offer any such evidence on whether Williams used coercion in questioning her, Edmonds would point out that such a battle would be futile when it would be her word against Detective Williams and Detective Litchford, who accompanied Williams just in case such an allegation was made. [*See, Davis,* at 475, Justice Souter concurring, (officers rarely lose swearing matches against criminal defendants at suppression hearings.") Even though Edmonds did not testify as to whether Williams coerced her or not, Edmonds had the right to rely upon this Court's "bright line" rule prohibiting subsequent questioning after requesting an attorney. Any subsequent responses initiated by the police to Edmonds, after she wrote "yes" to the question "Do you wish to have an attorney at this time?", would be presumed involuntary and therefore inadmissible. [*McNeil v. Wisconsin,* 501 U.S. at177.] This was designed to prevent police from badgering people like Edmonds into waiving her previously asserted

right to an attorney. [*Id.*] The Indiana Court of Appeals departed from *Edwards* when it concluded that Williams could question Edmonds in a non-coercive manner about her request for an attorney. Once Edmonds invoked her right to an attorney by writing "yes" to the question, "Do you wish to have an attorney at this time?", Williams had no right to question her any further about that response.

Edmonds would point out that the underlying rational for adopting *Miranda* is quite apparent in this case. When this Court adopted *Miranda,* it was concerned with the interrogation process. This Court stated,: "[i]nterrogation takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms." [*Miranda v. Arizona, 384* U.S. 436, 448, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966).]

Edmonds was place in an interrogation room that was equipped with recording equipment and Williams brought his own recording equipment. From past experiences, Williams contended that suspects were often confused about the waiver form.[7] In addition, Williams brought Litchford along to corroborate what transpired in the interrogation room in case there was some type of allegation asserted against him. Based upon these concerns, Edmonds wonders why Williams would deliberately choose not to use the recording equipment in the interrogation room or his hand-held recorder from the start of the interview to the end of the interview. Interestingly, Edmonds implicated the unknown male that entered Ruiz's motel room as Vincent Tillotson, who was

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[7]The Maryland Court of Appeals has concluded that any confusion in a waiver form should be construed against the author of the form which is the State. [*Billups v. State,* 135 Md.App. 345, 762 A.2d 609 (Md.Ct.App. 1999).] Edmonds would agree that any confusion in the waiver form was caused by the state and certainly should not be a basis to circumvent this Court's prohibition from questioning a suspect that has invoked her right to an attorney.

incarcerated at the time[8], and whose picture just happened to be in Williams' file at the time of the interview. While Williams claims Edmonds implicated Tillotson on her own initiative, which Litchford corroborated, Edmonds wonders what the tape would have shown had the interrogating officers elected to use it. Notwithstanding what happened in the interrogation room, this Court adopted a "bright line" rules to avoid the necessity of trial courts making such determinations. The statement obtained from Edmonds after she invoked her right to an attorney was involuntary and therefore inadmissible.

Williams advised Edmonds of her rights as required by *Miranda.* After being advised of her "Miranda rights", Edmonds was questioned about waiving those rights. Edmonds wrote "yes" to the question "Do you wish to have an attorney at this time?". This was an unambiguous and unequivocal request for an attorney. Once Edmonds' right to an attorney was invoked, Edmonds should never have been question, i.e. badgered, about her response. The "bright line" rule adopted by this Court to provide guidance to officers required that all questioning should have ceased. The trial court nor the Indiana Court of Appeals was required to determine whether Williams acted coercively when subsequently questioning Edmonds about her "yes" response under traditional due process standards nor did Edmonds need to engage in a swearing match against the officer at the suppression hearing as to what happened in the interrogation room. Once Edmonds invoked her right to an attorney, the subsequent statement was involuntary and therefore inadmissible.

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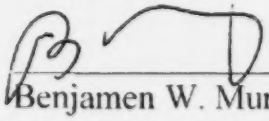
[8]At the time of the interview, Williams did not know that Vincent Tillotson was incarcerated. If Williams had known Tillotson was incarcerated at the time, then his picture probably would not have been in the file.

This Court has stated, "illegitimate and unconstitutional practices get their first footing....by slight deviations from legal modes of procedure." [*Miranda v. Arizona,* 384 U.S. at 459.] This Court must not tolerate slight deviations from the "bright line" rule enunciated in *Edwards.* This Court should grant Edmonds' petition for writ of certiorari from the Indiana Court of Appeals which elected to deviate from this Court's precedent firmly established in *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) and *Edwards v. Arizona,* 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). The trial court's denial of Edmonds' motion to suppress and the admission of her statement at trial was in contravention of this Court's bright line rule set out in *Edwards* and the judgment of the trial court should be reversed and remanded for a new trial with instructions that Edmonds' statement was involuntary and therefore inadmissible.

III. CONCLUSION

Based upon the foregoing, this Court should grant Edmonds' Petition for Writ of Certiorari from the Indiana Court of Appeals. This Court should find that Edmonds invoked her right to an attorney and the subsequently obtained statement was involuntary and therefore inadmissible. The trial court and Indiana Court of Appeals' opinion should be reversed and this matter remanded to the trial court with instructions to bar the admission of Edmonds' statement.

Respectfully submitted,



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(2)

Supreme Court, U.S.
FILED

06-248 JUN 17 2006

OFFICE OF THE CLERK

NO.: _____

IN THE

Supreme Court of the United States

Tiffany Edmonds

Petitioner

-vs-

State of Indiana

Respondent

Appendix On Petition for Writ of Certiorari To The Indiana Court of Appeals

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Kevin C. Smith
Clerk

CLERK
SUPREME COURT, COURT OF
APPEALS AND TAX COURT
STATE OF INDIANA
217 STATE HOUSE, INDIANAPOLIS, IN 46204

CauseNumber
46A05-0504-CR-00214
Lower Court Number:
46D010312FB164

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EDMONDS, TIFFANY -V- STATE OF INDIANA

You are hereby notified that the SUPREME COURT has on this 3/21/06

THIS MATTER HAS COME BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSFER JURISDICTION. FOLLOWING THE ISSUANCE OF A DECISION BY THE COURT OF APPEALS. THE PETITION WAS FILED PURSUANT TO APPELLATE RULE 57. THE COURT HAS REVIEWED THE DECISION OF THE COURT OF APPEALS. ANY RECORD ON APPEAL THAT WAS SUBMITTED HAS BEEN MADE AVAILABLE TO THE COURT FOR REVIEW, ALONG WITH ANY AND ALL BRIEFS THAT

MAY HAVE BEEN FILED IN THE COURT OF APPEALS AND ALL THE MATERIALS FILED IN CONNECTION WITH THE REQUEST TO TRANSFER JURISDICTION. EACH PARTICIPATING MEMBER OF THE COURT HAS VOTED ON THE PETITION. EACH PARTICIPATING MEMBER HAS HAD THE OPPORTUNITY TO VOICE THAT JUSTICE'S VIEWS ON THE CASE IN CONFERENCE WITH THE OTHER JUSTICES.

BEING DULY ADVISED, THE COURT NOW DENIES APPELLANT'S PETITION TO TRANSFER OF JURISDICTION.

BRENT E. DICKSON, ACTING CHIEF JUSTICE

ALL JUSTICES CONCUR, EXCEPT FOR SHEPARD, C.J., WHO DID NOT PARTICIPATE IN THIS CASE.

WITNESS my name and the seal of said Court,
this 21st day of MARCH, 2006.

/s/ _____
Clerk, Supreme Court, Court
of Appeals and Tax Court

FOR PUBLICATION

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IN THE
COURT OF APPEALS OF INDIANA

TIFFANY EDMONDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 46A05-0504-CR-214
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Walter P. Chapala, Judge
Cause No. 46D01-0312-FB-164

January 18, 2006

OPINION - FOR PUBLICATION

KIRSCH, Chief Judge

Tiffany Edmonds appeals both her convictions and sentences for robbery,[1] as a Class B felony and criminal

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[1] *See* IC 35-42-5-1.

confinement,[2] as a Class B felony. She raises two issues, which we restate as:

I. Whether the trial court abused its discretion when it admitted Edmonds's statement to police into evidence; and

II. Whether the trial court abused its discretion when it ordered Edmonds's sentences to be served consecutively.

We affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

On the evening of November 29, 2003, Carlos Ruiz went to the Shangri-La Gentlemen's Club, in Gary, Indiana. While in the club, Ruiz was approached by Edmonds, a dancer in the club, and she asked Ruiz if he wanted to buy her a drink. Ruiz agreed and pulled two rolls of money from his pocket, which contained almost $900. Ruiz also paid for a lap dance from Edmonds. Edmonds told Ruiz that she had three children, and she asked him if he could give her $50 for Christmas money for them. Ruiz agreed to give her $50, but she told him not to give it to her at that time and that she would meet him later to get the money. Ruiz gave Edmonds his cell phone number so she could call him to collect the money. Ruiz returned to his motel room at the Red Roof Inn in Michigan City at approximately midnight.

At approximately 6:00 a.m. the next morning, Edmonds called Ruiz and said she wanted to come over and pick up the Christmas money. Edmonds arrived at the motel room at approximately 7:00 or 7:30 a.m. When Edmonds entered Ruiz's room she attempted to leave the door unlocked. Ruiz told her that the door locked automatically and to just let it go because it would lock itself. She then

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[2] *See* IC 35-42-3-3(b)(2)(A).

suggested to Ruiz that they get some ice, and they both walked to the ice machine near the motel office. Edmonds again tried to leave the door unlocked when they exited the room. When they returned from the ice machine, Edmonds again attempted to unlock the door, and Ruiz asked her what she was doing.

Before Ruiz could reach the door to close it, an unidentified male burst into the room and held a gun in Ruiz's face and told Ruiz not to look at him. As the man pushed Ruiz towards the bathroom, he told Edmonds, "Get everything, bitch. Make sure you get everything." *Trial Tr.* at 78. The man then struck Ruiz in the head with the gun and duct taped Ruiz's mouth closed and his hands behind his back. After the man forced Ruiz into the bathtub, he shouted to Edmonds, "Get it all, bitch. Hurry up, bitch. Did you get it all, bitch? Did you get it all yet? Did you find everything, bitch?" *Trial Tr.* at 80. Edmonds responded, "I'm hurrying. I'm hurrying. I'm getting it." *Trial Tr.* at 80. When the man noticed that Ruiz had freed one of his hands, he struck Ruiz in the head several more times with the gun. Soon thereafter, Ruiz heard the door of the room close. Edmonds and the man took approximately $800 in cash, two cell phones, four sets of keys, a checkbook, a wallet, and a watch from Ruiz's room.

On December 2, 2003, the State charged Edmonds with robbery, as a Class B felony and criminal confinement, as a Class B felony, and a warrant was issued for her arrest. On February 26, 2004, Michigan City Police Detective Royce Williams and Detective-Sergeant Larry Litchfield went to the LaPorte County jail to speak with Edmonds after she had been arrested. The detectives told her that they were there to speak with her about the pending charges of robbery and criminal confinement against her. They then informed her that they first had to make sure that she understood her

rights. Edmonds stated, "that was fine" and agreed to speak with them. Detective Williams read Edmonds a LaPorte County Prosecuting Attorney's Office Constitution Rights Form ("Rights Form") and told her to read along as he read. The Rights Form consisted of an advisement of rights section and a waiver of rights section. *State's Ex.* 2. The advisement of rights section contained five sentences that were to be initialed to indicate that Edmonds had read and understood them. The waiver portion of the Rights Form contained five questions that were to be answered either "yes" or "no."

Edmonds answered "yes" to questions one and two, indicating that she had been read her constitutional rights and that she understood them. *State's Ex.* 2. Question number three stated, "Do you wish to have an attorney at this time?" *State's Ex.* 2. This question should be answered "no" in order to waive the right to an attorney. After question three was read to Edmonds, she initially wrote "yes." In Detective Williams's experience, some people get complacent and just automatically put yes as the answer to question number three when they really do not want an attorney at that time. *Trial Tr.* at 7. Detective-Sergeant Litchfield also had witnessed times in his career when people have mistakenly answered yes to question three on the Rights Form. *Trial Tr.* at 32. Immediately after Edmonds wrote her response, Detective Williams asked her if she wanted an attorney before speaking to police, and she said no, crossed out the word yes, changed her answer to no, and initialed the correction. *Trial Tr.* at 7.

During the interview, Edmonds admitted being in Ruiz's hotel room during the robbery, but denied any previous knowledge of the crimes or any other involvement in them. *State's Ex.* 1, p. 19; 30. Edmonds told the police that the unidentified male who robbed Ruiz was an ex-boyfriend of hers; however the police later determined that this ex-boyfriend was incarcerated at the time of the robbery

and could not have been involved. *State's Ex.* 1, p. 12.

Before Edmonds's trial, she filed a motion to suppress her statement to the police, which the trial court denied. *Trial Tr.* at 39. Edmonds was found guilty of Class B felony robbery and Class B felony criminal confinement after a jury trial. At her sentencing hearing, the trial court found Edmonds's criminal history to be an aggravating circumstance and found no mitigating circumstances. The trial court sentenced Edmonds to ten years for each conviction and ordered the sentences to be served consecutively. Edmonds now appeals.

DISCUSSION AND DECISION

I. Admissibility of Edmonds's Statement

The admissibility of evidence is within the sound discretion of the trial court and will not be disturbed without a showing of an abuse of that discretion. *Wright v. State*, 766 N.E.2d 1223, 1229 (Ind. Ct. App. 2002). Our review of a denial of a motion to suppress is similar to our review of other sufficiency matters. *Id.* (citing *Goodner v. State*, 714 N.E.2d 638, 641 (Ind. 1999)). We review the ruling for substantial evidence of probative value to support the trial court. *Alford v. State*, 699 N.E.2d 247, 250 (Ind. 1998). We examine the evidence most favorable to the ruling along with any uncontradicted evidence. *Wright*, 766 N.E.2d at 1229. We do not reweigh evidence or judge witness credibility. *Id.*

Edmonds argues that the trial court erred when it denied her motion to suppress and admitted her statement to police because it was obtained in violation of her Fifth Amendment right to counsel. She specifically contends that after her arrest and before she gave her statement, she asserted her right to counsel, but that the police did not stop the interrogation.

"The right to have counsel present during an interrogation 'is indispensable' to the protection of the Fifth

Amendment privilege against self-incrimination." *Jolley v. State*, 684 N.E.2d 491, 492 (Ind. 1997) (citing *Miranda v. Arizona*, 384 U.S. 436, 469, 86 S. Ct. 1602, 1625 (1966)). When a suspect invokes his right to counsel during custodial interrogation, the police must stop questioning until counsel is present or the suspect reinitiates communication and waives his right to counsel. *Id.* (citing *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1885 (1981)). "Invocation of the *Miranda* right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.'" *Davis v. United States*, 512 U.S. 452, 459, 114 S. Ct. 2350, 2355 (1994) (quoting *McNeil v. Wisconsin*, 501 U.S. 171, 178, 111 S. Ct. 2204, 2209 (1991)). If a suspect makes a request for counsel that is ambiguous or equivocal and, if in light of the circumstances, a reasonable officer would not understand the statement to be a request for an attorney, then the police are not required to stop questioning the suspect. *Id.* The Supreme Court in *Davis* noted that "it will be good police practice for the interviewing officers to clarify whether or not he actually wants an attorney" when a suspect makes an ambiguous statement, but it declined to adopt a rule requiring officers to ask clarifying questions. *Id.*

In the present case, Detective Williams and Detective-Sergeant Litchfield spoke to Edmonds while she was under arrest. After the detectives identified themselves and told her why they were there, she initially agreed to speak with them. Detective Williams read the advisement portion of the Rights Form aloud to Edmonds, while she read along and initialed each statement. He then read the waiver portion of the Rights Form, while she read along and answered the questions. Although Edmonds answered "yes" to question three, which asked whether she wished to have an attorney at that time, both detectives had experience with

suspects in the past, who had mistakenly answered "yes," but had intended to answer "no." In the past, suspects had become complacent and automatically answered "yes" to question three when they actually did not wish to have an attorney at that time. Because of Edmonds's actions and demeanor up to that point, the detectives had an objective, good faith question as to whether Edmonds really intended to answer "yes." They therefore made a non-coercive inquiry into whether she wanted an attorney before she spoke to police. She immediately answered "no," changed her answer on the Rights Form to reflect this, and initialed the change.

The present case is distinguishable from *Smith v. Illinois*, 469 U.S. 91, 105 S. Ct. 490 (1984), where nothing in the suspect's actions or statements prior to his request for counsel could be pointed to in order to cast doubt on the request. *Id.* at 96, 105 S. Ct. at 493. The request for counsel could only be found to be ambiguous by looking to the suspect's subsequent responses to continued police questioning. *Id.* at 97, 105 S. Ct. at 494. The Supreme Court held that when "nothing about the request for counsel or the circumstances leading up to the request would render it ambiguous, all questioning must cease." *Id.* at 98, 105 S. Ct. at 494. Here, the circumstances that make Edmonds's answer to question three equivocal all preceded her answer. Because Edmonds's prior actions and statements cast doubt on the legitimacy of her request for an attorney, the detectives were not required to stop questioning Edmonds, and the trial court did not abuse its discretion when it admitted her statement.[3]

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[3]Edmonds also contends that her statement was obtained in violation of her Sixth Amendment right to counsel. Because we find that Edmonds's answer of "yes" was not a clear and unequivocal request for an attorney and her Fifth Amendment right was not violated, the same reasoning applies, and we conclude that her statement was not obtained in violation of her Sixth Amendment right.

II. Consecutive Sentences

Sentencing decisions are within the trial court's discretion and will be reversed only upon a showing of an abuse of that discretion. *Westmoreland v. State*, 787 N.E.2d 1005, 1008 (Ind. Ct. App. 2003). The trial court's sentencing discretion includes determining whether to increase the sentence, to impose consecutive sentences on multiple convictions, or both. *Parker v. State*, 773 N.E.2d 867, 872 (Ind. Ct. App. 2002), *trans. denied*. We may revise a sentence authorized by statute if it is inappropriate in light of the nature of the offense and the character of the offender Ind. Appellate Rule 7(B); *Westmoreland*, 787 N.E.2d at 1009.

Edmonds argues that the trial court abused its discretion when it sentenced her to ten years for each of her convictions and ordered the sentences to be served consecutively. She first contends that the trial court improperly characterized her prior criminal history as a significant aggravating factor. In order to impose consecutive sentences, the trial court must find at least one aggravating circumstance. *Ortiz v. State*, 766 N.E.2d 370, 377 (Ind. 2002). If a trial court imposes consecutive sentences, when not required to do so by statute, this court will examine the record to insure that the trial court adequately explained its reasons for selecting the sentence imposed. *Id.*

The trial court is required to identify all significant aggravating circumstances. *Westmoreland*, 787 N.E.2d at 1010. "Significance varies based on the gravity, nature and number of prior offenses as they relate to the current offense." *Id.* (citing *Wooley v. State*, 716 N.E.2d 919, 932 (Ind. 1999)). The trial court only found one aggravating circumstance, which was Edmonds's criminal history. As a juvenile, Edmonds was charged with disorderly conduct and

intimidation and was placed on formal probation and ordered to write a letter of apology. The record is unclear as to whether she was adjudicated on one or both of these charges. Edmonds also had one adult conviction for disorderly conduct. The record does not contain any evidence that her prior disorderly conduct conviction and juvenile charge are related in any way to the present offenses. The only offense that could relate to the present offense is her prior juvenile charge of intimidation. We find based on this evidence that Edmonds's criminal history is not a significant aggravating circumstance, and the trial court abused its discretion in identifying it as one.

Edmonds also claims that the trial court abused its discretion when it did not find undue hardship on her dependents as a mitigating circumstance. We disagree. The finding of mitigating circumstances is well within the discretion of the trial court. *Abel v. State*, 773 N.E.2d 276, 280 (Ind. 2002). A sentencing court need not agree with the defendant as to the weight or value to be given to a proffered mitigating factor. *Bostick v. State*, 804 N.E.2d 218, 225 (Ind. Ct. App. 2004). "Only when a trial court fails to find a mitigator that the record clearly supports does a reasonable belief arise that the mitigator was improperly overlooked." *Abel*, 773 N.E.2d at 280. The record shows that Edmonds has custody of only two of her three children and that they had been in the care of her mother while Edmonds was in jail pending the outcome of this case. Based on these facts we conclude that undue hardship on Edmonds's children was not a significant mitigating circumstance, and the trial court did not abuse its discretion when it did not find it to be one.

Based on the conclusion that the trial court abused its discretion when it found Edmonds's criminal history to be an aggravating circumstance, we choose to exercise our right under Indiana Appellate Rule 7(B) to revise Edmonds's

sentence. We find that the imposition of consecutive sentences was inappropriate, and we revise Edmonds's sentence and order her sentences of ten years for robbery and ten years for criminal confinement to be served concurrently.

Affirmed in part, reversed in part.

MAY, J., and ROBB, J., concur.

CCS ENTRY FORM

LAPORTE SUPERIOR COURT **FILE STAMP HERE**
MICHIGAN CITY, INDIANA **FILED**
IN OPEN COURT

CAUSE NUMBER: 46D01-0312-FB-00164
JAN 06 2005

CAPTION: STATE vs. TIFFANY D. EDMONDS

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS): Comes now the defendant, Tiffany Edmonds, by counsel and files Motion to Suppress.

Submitted by:

BENJAMEN W. MURPHY
Walter J. Alvarez, P.C.
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Opposing Counsel:

State Prosecutor

****

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

( ) Placed in case file
( ) Discarded after entry on the CCS
( ) Mailed to all counsel by: __Counsel __Clerk Court
( ) There is no attached order; or
The attached order shall be placed in the RJO:
Yes __No

DATE: 1/6/05 APPROVED:/s/_____
JUDGE

****

Certificate of Service

I certify that on the 5 day of January, 2005 service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by facsimile on January 5, 2005 and hand-delivery on January 6, 2005.

BY:/s/ Benjamen W. Murphy

STATE OF INDIANA IN THE LAPORTE SUPERIOR COURT

COUNTY OF LAPORTE MICHIGAN CITY, INDIANA

F I L E D

STATE OF INDIANA IN OPEN COURT

-vs- CAUSE NO.: 46D01-0312-FB-164

JAN 06 2005

TIFFANY D. EDMONDS

MOTION TO SUPPRESS

Comes now the defendant, Tiffany D. Edmonds, by counsel and moves to suppress her statement taken on February 26, 2004 for the reason that her rights were violated under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. In support thereof the defendant would show the Court as follows:

1. The defendant was charged by the way of information on December 2, 2003 with the Robbery, as a Class B felony and Criminal Confinement, as a Class B felony and a warrant was issued for her arrest.

2. The defendant was picked up in Porter County on the warrant was later transported to the LaPorte County jail.

3. On February 26, 2004, the defendant was brought into the detective bureau for a statement in regards to this case.

4. Prior to the statement being taken, the police had her review a waiver of rights form which she indicated that she wished to have an attorney. [a true and accurate copy of the waiver of rights form is attached hereto and

incorporated herein as "Exhibit A", wherein the firm indicated tat the defendant wanted an attorney]

5. Soon thereafter, the form was changed and initialed by Tiffany Edmonds to no.

6. The police did not tape the process of going over the waiver form or the initial conversation.

7. The police, then, took a taped statement from the defendant wherein she indicated that she was waiving here rights.

8. The Fifth and Fourteenth Amendments to the United States Constitution prohibition against compelled self-incrimination require that custodial interrogation be preceded by advice to the accused that she has the right to remain silent and also the right to the presence of an attorney. *[Edwards v. Arizona, 451 U.S. 477 (1981).* In *Edwards,* the defendant was in custody and requested an attorney. The following date, another officer has the defendant removed from his cell and advised him of rights. This time, the defendant gave a statement implicating himself. The U.S. Supreme Court held that when the defendant requests counsel that the police cannot reinitiate interrogation even when the defendant is read his or her rights until counsel has been made available to him or her unless accused initiated further communication, exchanges or conversations with the police. *[Id.]*

9. The Sixth Amendment prohibits post-indictment custodial interrogation of a defendant when he or she has requested counsel even when the defendant's Miranda rights are read and waived. *[Michigan v. Jackson, 475 U.S. 625 (1986).]*

WHEREFORE, the defendant respectfully requests that this Court suppress the state of Tiffany Edmonds which was procured in contravention of the Fifth, Sixth and Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

/s/

Benjamen W. Murphy, #21028-45
Walter J. Alvarez, P.C.
1524 West 96th Avenue
Crown Point, Indiana 46307

LaPorte County Prosecuting Attorney's Office
Constitution Rights Form

You are a suspect in a criminal investigation. Before we ask you any questions, it is our duty to advise you of your constitutional rights and to warn you of the consequences of waiving these rights. To indicate that you understand what your rights are, please place your initials on the line provided after you read them and as they are read to you.

1. You have the right to remain silent. /i/ T.E.

2. Anything you say can and will be used against you in a court of law. /i/ T.E.

3. You have a right to talk with an attorney and have him/her present with you while you are being questioned. /i/ T.E.

4. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you wish. /i/ T.E.

5. You can decide, at any time, to exercise these rights and not answer any questions or make any statements. /i/ T.E.

Constitutional Rights Waiver

If you are willing please indicate your answers to the following questions by writing "YES" or "NO" to each of these questions after you read them and they have been read to you.

1. Have you read the above statements of your constitutional rights and have they been read to you? Yes

2. Do you understand each of these rights? Yes

3. Do you wish to have an attorney at this time? No Yes

4. Has any force, threats or promises of any kind or nature been used by anyone to influence you to waive these? Yes

5. Are you willing to talk with the police? Yes

I am signing this waiver voluntarily after having been so advised of my Constitutional Rights and before any questions have been asked of me.

/s/Tiffany Edmonds

Witnessed By:

Officer's Signature: /s/Royce Williams Officer's Signature:Larry Litchford

Location of Statement:LaPorte County Jail (Det. Bureau)
Date: 2-26-04 Time: 1:46p.m.

STATE'S WITNESS- ROYCE WILLIAMS (DIRECT)

January 10, 2005

(Voir dire examination occurs. Jury selected and sworn. Jury admonished; following matter outside the presence of the jury.

THE COURT: Ready to proceed?

MR. MURPHY: I'm ready to proceed now.

THE COURT: I would assume then, the State is going to present some testimony?

MR. PRICE: We are, Your Honor. Call as our first witness, detective Royce Williams.

THE FOLLOWING EVIDENCE WAS PRESENTED:

(Witness approached witness stand and is sworn in by the Court.)

ROYCE WILLIAMS:

Having been duly sworn in by the Court, testified upon his oath as follows:

DIRECT EXAMINATION
BY MR. PRICE:

Q Tell us your name, please.

A Royce Williams

Q You're a detective with the Michigan City Police Department; is that correct?

A That is correct.

Q You're the detective that was assigned to investigate this particular case, that being the State of Indiana vs. Tiffany Edmonds; correct?

A That is correct.

Q In the course of that investigation, you interviewed several people including the victim, Mr. Carlos Ruiz, and further leads in your investigation developed a

suspect, one tiffany Edmonds; is that correct?

A That is correct.

Q Do you see her in Court today?

A Yes I do.

Q Could you point her out?

A (pointing to defendant) she's the female sitting in front of me in pink.

Q And you, sir- there came a point and time where you testified before this Court, you obtained an arrest warrant, and Miss Edmonds was arrested; is that correct?

A That is correct.

Q She was taken into custody and she was being housed at the LaPorte County Jail. At some point and time after her arrest, when there came a point when you and another detective went and talked to Ms. Edmonds; is that correct?

A. That is correct.

Q Do you recall when that was?

A That would be February 26, 2004.

Q Who was the other detective?

A That other detective would be Detective- Sergeant Larry Litchford.

Q What was the purpose of you going to the LaPorte County Jail to talk to Miss Edmonds?

A To speak to her reference this incident and to read her her rights and see if she wanted to tell us her side of the story reference to the incident that happened.

Q So you and Detective Litchford show up at the LaPorte County Jail. What happens upon your arrival?

A Upon our arrival, we request her summoned down from the jail, because it is connected. We're at the LaPorte County Sheriff's Department detective

Bureau in the basement; and once she gets down there, we advise who we are, read her her Constitutional Rights as she reads along, reference to the standard form we use every single time, and proceed from there whether or not she wanted to waive her rights.

Q And she was in fact brought out of the County jail down to the Detective Bureau?

A That is correct.

Q Was she brought into what is used by their Detective Bureau as a standard interview room?

A Yes.

Q And so the only people present in this room would have been yourself, Detective Litchford and Miss Edmonds.

A. Correct.

Q How long had Miss Edmonds been in jail at that point? Do you recall, approximately?

A. Are you including the incarceration in the other county or just in LaPorte?

Q Yes, if you would. If you have any idea.

A Approximately a week, but I'm not sure.

Q A period of that time you said was in another jurisdiction?

A Correct.

Q And then she came to be in the LaPorte County Jail for a much briefer period of time, perhaps how many days?

A I believe that on the second day we went and seen her.

Q All right. When she was brought down, did you and Detective Litchford explain to her who you were and why you were there?

A Yes we did.

Q What did you tell her?

A We told here that we were detectives with the Michigan City Police Department in reference to the warrant through Laporte County of Robbery and Criminal Confinement and we're here to speak to her reference to that, prior to that, we had to make sure she understood what her Constitutional Rights were.

Q What did she say in response?

A She said that was fine.

Q She agreed to talk to you?

A She did agree to talk. I can't tell you verbatim what exactly what she said, but she did not deny at that point and time and let us go through the form.

Q Now, is it your standard procedure that before you ever talk to anyone about the substance of the case itself, that you're there, you talk to them about that- you go through a waiver of rights with them, you indicate?

A That is correct.

Q Is that a standard form that you follow in each and every case?

A Yes.

Q Let me show you what's been marked for purposes of this suppression hearing, Detective, as State's Exhibit Number 2. Do you want to take a look at that and review and tell me if you recognize it.

A This is the form we used on that particular date when we spoke to Ms. Edmonds.

Q And that form contains a variety of questions that – first of all, would you say there is an upper and lower half you that form?

A Yes there is.

Q First it contains five enumerated sentences and where after each one- that is an advisement, a numbered

advisement, if you will, the person places their initials?

A Correct. That's the Constitutional Rights' portion.

Q And did in fact Ms. Edmonds read each of those and place her initials after each one?

A I read them and she was advised to read along as I read, and she subsequently looked at the page, and I understood she was reading it as I read.

Q All right. She placed her initials on; is that correct?

A Correct. After each one was read and explained.

Q Now that Exhibit 2, that is not an original, is it? That's a copy?

A That is a copy.

Q Do you believe that copy is a true and correct copy of the original?

A Yes.

Q All right. You've compared it to the original and you believe that it is in fact the same in all aspects?

A Yes.

Q All right. Now, the second lower portions, Constitutional Rights Waiver, each of those five enumerated lines are questions. Would you agree?

A I agree

Q And, there is a line after that and on each line, the person is supposed to write an answer yes or no; is that correct?

A That is correct.

Q First one deals with whether or not they understand the rights that have been read to them above, and if they'd been read to you, and what was her response to that?

A The first one is, have they read the statements of the Constitutional Rights and have I read it to them, and of course she wrote yes.

Q The second one deals with what?

A If she understands the rights that I've read and that she's read and she replied yes.

Q And the third one, what does that deal with?

A The third question is, "Do you wish to have an attorney at this time."

Q What did she write in there initially?

A She wrote "Yes."

Q All right. And did there come a point and time where you questioned her about that?

A. Well immediately following this, because this is not the first time reference to this happening, because that the two answers prior to that were yes, some persons do get complacent and just automatically put yes in there. So to confirm that everything is done correctly, as soon as she put yes, I asked her, you do want an attorney before you speak to police. And she said no. At that point I said, "Please put no there. Cross out the yes, and put your initials there to make it look like I didn't do it."

Q Did she do that?

A She did.

Q And is that what's reflected on that form?

A That is what's reflected.

Q Now is that the question- is that- obviously it's a Constitutional Right, but why is that an important question with respect to what takes place after that?

A Well, if she did wish to have an attorney at that time, obviously if she doesn't have an attorney present with her, all questions would cease at that point and time.

Q So if she in fact answered yes then are you saying it is protocol, in fact, mandatory that you can no longer ask any questions including questions 4 and 5 on this form?

A That is correct.
Q Everything ceases at that time?
A Everything.
Q Did everything cease at that time?
A No it did not, because she made a mistake and corrected her mistake and place her initials in that answer box.
Q And in fact, you went on with questions 4 and 5 with the other two rights, and she answered those by writing the answers indicated on State's Exhibit 2; is that correct?
A That is correct.
Q Now, that rights waiver form is read to her immediately upon your entering in the room with her and introducing yourself before you ever ask any questions; is that correct?
A That is correct.
Q Now there came a point and time then where you started interviewing Miss Edmonds and you asked her some questions about what her involvement was and what information and knowledge she may have about this event; is that correct?
A Correct.
Q How long do you think that lasted?
A Probably thirty minutes, give or take.
Q Was that tape-recorded or audio or video-taped recorded in any way?
A No, not the oral interview.
Q Did there come a point in time, though, where there was an audio-taped statement that was taken?
A Yes there was.
Q All right. And do you know approximately what time it was that that happened?
A That would have been at 2:29 p.m., the same day.

Q Now on this Constitutional Rights waiver form, there is written thereon a date and time; is that correct; State's Exhibit 2?

A Correct.

Q What does that indicate the time to be?

A 1:46 p.m.

Q On the 26th day of February, 2000- it says 2004; is that correct?

A Correct.

Q: Any you said there came a point and time where the tape recorder was turned on ; is that correct?

A That's correct.

Q And you proceeded to tape the statement that was given by Ms. Edmonds.

A Yes.

Q do you set the record, so to speak, on that, by explaining who you are, why you're there, kind of preamble as to where you're at, the time, date and so on and so forth.

A Yes. Before we get into the body of the statement, we once again go over the Constitutional Rights form that we did orally, we then do it for the purpose of the taped statement.

Q And then once you set that record, you go voer this very form that you just talked about in State's Exhibt 2 on the tape; is that correct?

A That's correct.

Q You review the exact same issues that are covered in the written form that you would have reviewed in this case less than forty-five minutes prior.

A Yes I did.

Q And that would be reflected on the audio tape as well; is that correct?

A Yes it is.

Q: Is it standard any time you take any type of a taped statement, that your department has that statement immediately afterwards transcribed.

A; Yes.

Q: And how is that transcribed?

A Through a secretary.

Q And once that tape is transcribed, typed up, if you will, in a written question and answer format, it's provided to you then immediately?

A Yes it is.

Q Do you examine it and compare it to the tape to insure that what was said on the tape, is properly reflected on the transcription itself?

A: Yes.

Q Did you do that in this particular instance?

A Yes.

Q Let me show you what's been marked as State's Exhibit 1, for purposes of this suppression hearing, if you would review that, Detective, and tell me if you recognize it.

A I do.

Q What do you recognize it as?

A This is the taped statement that I took from Tiffany Edmonds.

Q That taped statement, again, is there a certain portion in that taped statement, first of all, very early on if not in fact the very first page of the transcription that sets the date and time?

A Yes.

Q What is that?

A It's February 26th, 2004, and the time when it started was 2:29 p.m.

Q 2:209. So State's Exhibit 2 was started at 1:46 . You started the tape a little less than forty-five minutes

later; correct?

A Correct

Q Now, the very first page or two of that statement, does that reflect the transcription of the conversation, the question and answer colloquy that you engaged with Miss Edmonds about her understanding of what her rights were.

A Yes.

Q Did you go through that with her?

A Yes I did.

Q is one of those questions that's brought out during that taped portion of the interview and reflected in that transcription, cover the issue of her desiring an attorney or not?

A Yes.

Q: Could you read into the record once you find it.

A: On the second page, Iasked, do you – "Do you wish to have an attorney at this time?" Tiffany's response was "Not at this time, no."

Q: How many interviews do you think you've taken, Detecitve Williams, interviews of individuals who were suspects in criminal cases?

A: Over a hundred.

Q Is this a common occurrence where because of the way the questions are worded and the order they're worded in, that individuals write "yes" because they're what, in the habit of just writing "yes" or what?

A Yes. I don't know – if they just become complacent just the way that they wrote, yes, yes, and they follow in order, although they meant something else. That's why I want to make sure that they do the form the way they want to do it instead of making a mistake and stopping something that they want to proceed

with.

Mr. Price: No further questions of this witness. Your Honor. We move to admit State's Exhibits 1 and 2.

The Court: Any objection on the exhibits?

Mr. Murphy: For this hearing, no.

The Court: All right. They will be admitted. Cross.

CROSS EXAMINATION
BY MR. MURPHY:

Q. Detective Williams, you were assigned to investigate this case; correct?

A. Correct.

Q. And during your investigation, you talked to various people. Correct?

A. Yes.

Q. And you came before this Honorable Court and testified in a probable cause hearing; correct?

A. Yes.

Q. And that was to – to be able to file an information and have a warrant executed for the arrest of Tiffany Edmonds; correct?

A. Correct.

Q. And that was done prior to you speaking to her; correct?

A. Yes.

Q. And she was picked up in Porter County; correct?

A. Yes.

Q. And in Porter County, there was a warrant for this case and there was also a warrant out of Hammond; isn't that correct?

A. I believe for FTA.

Q. Okay. And you found out that she had been picked up on that warrant; correct?

A. Yes.
Q. And you were making plans to possibly going out to Hammond or maybe Porter County to question her; correct?
A. If it didn't work out for her to come back here soon, because I believe she already had a court date set in Hammond, so they were going to keep her on theirs first.
Q. And you said the purpose was you wanted to hear her side of the story; correct?
A. Correct.
Q. You didn't think her side of the story was necessary before you got charges filed against her, did you?
A. Well, I didn't have her, I couldn't find her, so obviously we had to file charges first, and if that's the case, we can't just let it go.
Q. So you filed the charges first without hearing her story' correct?
A. I filed for probable cause.
Q. Okay. And it's fair to say that it's pretty important to talk to a person who's charged, before they appear in court; isn't it? I mean , isn't that why you wanted to go to Hammond?
A. Once she was arrested?
Q. Yes.
A. Well either I knew she was incarcerated, and being that she had charges already in Hammond, it would just be a matter of time before I did speak with her, and I would speak with her, but being that they had held her on a specific charge there, and had her on – and already had a court date set for I believe the 29th, I was going to wait that one out.
Q. Now once they're brought over here, you know they're brought before the Court; correct?

A. Okay.
Q. Correct?
A. Sure.
Q. Or sometimes they have hired their own attorney; correct?
A. Or have one appointed, yeah.
Q. You don't normally contact attorneys, because you want to talk to someone and hear their side of the story, do you?
A. No. We go to the individual who is suspected of committing the act or allegedly committed the act and ask them if they wanted to speak about the incident.
Q. But I'm saying, you never contact an attorney once someone has entered their appearance to speak, because you want to speak with their client, do you?
A. I had no idea she had an attorney.
Q. I'm just asking you if an attorney had entered-
A. -do I call an attorney-
Q. -would you contact an attorney and ask to speak-
A. -I have not.

Q You wouldn't do that, would you?
A I haven't.
Q You haven't?
A No. Contact an attorney?
A Yes.
A No. I contact the person unless I understand already they have an attorney and does not wish to speak to law enforcement without the presence of one.
Q: But I'm saying, once an attorney has entered his appearance in the case, and you're the detective on the case, do you ever contact the attorney and tell the

attorney you want to speak to their client?

A No.

Q You never do that. You just go right to the person; correct?

A I have in the past.

Q They don't have the benefit of having an attorney.

A Well if I had knowledge that they had an attorney, I wouldn't go that route. I had no knowledge she had an attorney. That's why I confront her.

Q: Now, when you go, you had her - I mean, she was in the LaPorte County Jail; correct?

A Correct.

Q And you had her brought down to speak to you; correct?

A Yes, In the Detective Division.

Q All right. And you also had another detective present as well; correct?

A Yes I did.

Q Okay. And before you talk to these people, you always advise them of their rights; correct?

A Correct.

Q And you have a standard form you used?

A Yes.

Q: Now, Miss Edmonds was in custody in LaPorte County; correct?

A Yes she was.

Q She didn't voluntarily come down to talk to you, did she?

A She was summoned donw by me and brought down by the jailers.

Q So are you basically - she was probably cuffed when she was brought down; correct?

A I didn't see her in the hall. I don't know if she was cuffed or not.

Q But I mean, she wasn't free to just walk form her cell to the Detective Bureau; correct?

A Yes.

Q And then before you questioned her, it's standard for you to go over the entire form; correct?

A That is correct.

Mr. Murphy: May I approach the witness?

THE COURT: Yes.

(Approaches witness with waiver form.)

Q Now specifically, you went over the first five paragraphs; correct, with her?

A First I went over this paragraph up here and then I went into the questions where it requires her initials, that's the actual Constitutional Rights.

Q Are these her initials?

A Yes.

Q So you had her put her initials next to each one of these when you had her questioned; correct?

A When I read them and she read them afterwards, she placed her initials on the line provided afterwards.

Q Okay. And then below there, there is something called Constitutional Rights Waiver; correct?

A Correct.

Q You had them read through this; correct?

A Yes. Same thing, I read this sentence here out loud and then started with question number one.

Q Okay. This part up in front before the numbered paragraphs, that's the instructions; right?

A Correct.

Q It says, "If you are willing, please indicate your answers to the following questions by writing yes or no to each of these questions after you have read them and they have been read to you." Correct?

A Exactly.

Q And those are the instructions. They can put yes or no; correct?
A Yes.
Q Okay. And paragraph 1, what does that read?
A Sentence one says, "Have you read the above statements of your Constitutional Rights, and have they been read to you?"
Q And what was her answer?
A "Yes."
Q Paragraph number 2.
A Sentence two?
Q Yeah.
A "Do you understand each of these rights?"
Q And what's her answer?
A "Yes."
Q And then in paragraph number three, "Do you wish to have an attorney at this time?" What did she originally write?
A She wrote "yes".
Q What does that mean to you? Someone tells you yes, I want a lawyer.
A And as I explained earlier, a lot of people get complacent -
Q -I'm just asking you what that means.
A I just wanted to make sure she understood what she wrote and that this conversation would be over.
Q: You still haven't answered my question. I'm simply asking you, if someone writes, "Do you wish to have an attorney at this time?" and they write "yes", what does that mean to you?
A: It means that they want an attorney.
Q: Okay. And that's exactly what was written; correct?
A: And that's what I asked her.

Q: Okay.
A: Just to verify, because my past experience has shown the people-
Q: -I'm not interested-
A: -yes, obviously yes would mean they want an attorney.
Q: And then paragraph number four, what does that say?
A: Sentence four, "Has any force, threats or promises of any kind or nature been used by anyone to influence you to waive those rights?"
Q: And what is the answer there?
A: "No."
Q: That's different than the answer in response to question number one, isn't it? Number one says "yes": correct?
A: Sure.
Q: Number two says "yes"; correct?
A: Yes.
Q: And number four says "no"; correct?
A: That is correct.
Q: So basically you said based on past experience you think sometimes people don't understand what they put their answer down; correct?
A: Correct.
Q: And you're not a mind reader; right?
A: No.
Q: I mean, you just know that basically there's the question, there's the answer; correct?
A: From my experiences, yeah.
Q: And then you ask her, did she- is that what she wanted. You ask her "Do you want an attorney."
A: I ask the question and she did write yes.
Q: But then you ask her after she put had yes-
A: - yes. After putting that "yes", I said, are you- you

want an attorney right now? That's what you put. She goes "no", I said, well-

Q: -so basically you ask her, "So do you" - after she had written, yes, you said, "Do you wish to have an attorney?"

A: I asked her if she wanted an attorney at this time because that means we have to stop talking right now, and when she said no, she realized she made the mistake, I told her to cross that out -

Q: -well wiat. You're saying that her answer has changed. I'm not asking you to read her mind. It says "yes" at first.

A: It says "yes".

Q: And then yu ask her, "is that what you wanted?"; correct?

A: Correct.

Q: You initated that; correct?

A I did.

Q: Now my question is, between the time that she wrote yes there and that you asked her the question, how much time elapsed?

A Between the time - of question two and three?

Q No. Once you saw that she had written "yes" there.

A Immediately thereafter.

Q So between the time she wrote "yes" and then changes to "no", did you ever make an attorney available to her?

A No I didn't.

Q: So she was never able to talk to an attorney after she wrote "yes".

A Because I wanted to make sure it was not a mistake, as it's been done so in the past. Even number four.

Q: Did you ask her if paragraph number four was a mistake?

A If this one would have been left "yes" without me coming back to that, that one most likely might have been "yes" as well, jsut because people get complacent.

Q I'm just asking you a question, did you ask her if paragraph four, if her response to that was a mistake?

A No

Q Did you ask her if she made a mistake in her response to paragraph number five?

A: No. I did not.

Q: Did you ask her if she made a mistake in regards to paragraph number one?

A: No.

Q: Did you ask her if she made a mistake in regards to paragraph number two?

A No.

Q: Now paragraph number three was the only question that you asked her whether was mistaken on; correct?

A That is correct.

Q Now it's fair to say that the advantage are different when someone has a lawyer, isn't it?

A It just depends.

Q How often do people talk to you when they have a lawyer?

A I've spoken to people with attorneys in the same room.

Q But it doesn't occur very often, does it?

A No it doesn't.

Q Most of the time most lawyers will advise you not to - will advise most their clients not to talk; right?

A I believe so.

Q I'm sure lots of times you probably have lawyers contact you and instruct that they have been hired an not to speak with their client; correct?

A They have in the past.
Q And the purpose of having a lawyer is to level the playing field. Isn't it?
A It's their right, it's their Constitutional Rights. You can call it what you want. It's their Constitutional Right. If they want an attorney, they can have one.
Q In this room there was two detectives; correct?
A Correct.
Q Miss Edmonds didn't voluntarily come there to talk to you, did she?
A She was escorted down.
Q I mean, she was picked up on a warrant; correct?
A She could have stopped it right there and then.
Q And you initiated the conversation, I mean, you had her summoned out, correct, from the jail, Detective?
A Yes.
Q And after she ut down at her response to number three, "Do you wish to have an attorney?" she wrote "yes"; right?
A And I wanted to make sure she didn't make a mistake.
Q And that was at your prompting, your questioning, your asking her whether that was clear or not clear.
A Correct.

MR. MURPHY: Correct? I don't have any more questions.

BY MR. PRICE (RE-DIRECT)

Q Detective, you said you'd like to have had her sign - first of all, she had contacted you and left a message that she was going to talk to you; is that correct?
A That is correct.
Q Did she ever show up to do that?
A No she did not.
Q So the only opportunity you ever had to talk to her was at the LaPorte County Jail.

A That is correct.

Q Now with respect to- is there any question in your mind that she was there freely and voluntarily answering these questions?

A I believe she was.

Q Did she ever say, "I'm going to get up, I'm going to leave."
Did she ever try to open the door-

A -not one time.

Q "Take me back to my cell"

A No

Q Nothing like that. Did she ever tell you "I feel sick, want anything to drink."

A No.

Q Now, you said that when she answers this question, Mr. Murphy asked you, "What does that mean to you." Yes means that they want an attorney. And you said that - I think that you asked her the question because you wanted to clarify it; is that correct?

A That's correct.

Q Basically, on that particular question, you would have two options; is that right? One, you either stop everything right then and there, close your notebook and you and Detective Litchford get up and walk out of th room and leave her there; right?

A Correct.

Q It's over with; right?

A Yes.

Q So you're explaining to them what's going on' right?

A Yes.

Q And in fact, with respect to the issue that Mr. Murphy raises that, "Well you didn't do this on any of the other four questions." In fact you didn't; is that correct?

A That is correct.

Q If if fact the answer to those questions were such that they were different, let's say on question one, "Have you read these statements and have they been read to you." If they put "no".

A If they put "no", then I would go over it one more time. I would ask, "What didn't you understand?" If it was question number two, I would ask if there was something I needed to explain. Once again, I would not stop at that point unless she did in fact clarify that number three, she wrote "yes" and meant yes, it would cease at that time.

Q Same thing with number four, "Any forces or threats used? If they would have put "yes", would you have inquired about that?

A Yes, that's what's happened in the past.

Q And in fact she ut "no", so there's no reason to inquire further about that; right?

A Correct.

Q And "Are you willing to talk to the police?" She put "yes". What else is there to talk about in that particular instance if she puts "yes", other than you start talking about the case; right?

A Correct.

Q: And in fact, the very answer that she gives to question number three, the first time, that being "yes", really is contrary to what she put to question number three above where she indicates that she had the right to have an attorney present and be present with her while she's being questioned. She understood that; right?

A She understood it by placing her initials next to it.

Q So the fact that she had said that she understood that right, but then she answers the question that she

wants an attorney at that time, your reason for again asking the question was to make sure she understood that right and that was intentionally her answer.

A Correct.

Q And it was what period of time between the time she wrote that and you inquired?

A Immediately thereafter.

Q Did you discuss anything else about "Well, you know, this is -

A -no.

Q '"you put that down and did you really mean that? Do you want to think about it?" Did you say anything like that?

A No.

Mr. Price: No further questions, Your Honor.

The Court: Mr. Murphy.

Mr. Murphy: Nothing further. Your Honor.

The Court: Step down. Thank you.

(Witness complies and steps down from the witness stand.)

Any other witnesses?

Mr. Price: Detective Larry Litchford, Your Honor.

(Witness approaches witness stand and is sworn in by the court.)

Larry Litchford:

Having been duly sworn in by the Court, testified upon his oath as follows:

Mr. Price (Direct Exam)

Q Would you tell us your name, please.

A Larry Litchford.

Q Detective Litchford, you're a detective with the Michigan City Police Department; is that correct?

A Yes, sir.
Q You're a sergeant with the Detective Bureau; correct?
A Yes, sir.
Q You heard Detective Williams testify here about this issue that's being raised in this suppression hearing; is that correct?
A Yes, sir.
Q Were you in fact present during the time when that interview was given to yourself and Detective Williams that occurred on the 26th day of February, 2004 in the LaPorte Coutny jail?
A Yes I was.
Q And were you present when Miss Edmonds was questioned, or first of all, was advised as to what her Constitutional Rights were?
A Yes I was.
Q Did you witness her placing her initial after each of the five rights that were read to her and she read along with?
A Yes.
Q Were you present also when each of the questions were asked with respect to whether or not she understood each one of those rights?
A Yes.
Q You were present when question number three was asked of her?
A Yes I was.
Q Did you see her write "yes"?
A Yes I did.
Q And what do you recall happening at that point?
A At that point and time, Detective Williams asked her the question again and explained to her was yes what she wanted to stay with, and at that point and time, she said no, a mistake was made. She wanted to talk

to us. She didn't want an attorney. So she crossed out the entry "yes" and put "no".

Q And then she proceeded to answer the other two questions the way it's indicated on the form; is that correct?

A Yes.

Q You have been a detective longer than Detective Williams; is that correct?

A Yes.

Q How long?

A I've been a detective for twenty-seven years.

Q How many people do you think you've interviewed?

A Thousands.

Q For most of that time, has this waiver of rights form been the similar type form that you've always used?

A Yes, sir.

Q Have you also noticed that individuals sometimes when they're answering these questions, they in fact also place "yes" for question number three?

A I've had people say one thing and write down another; yes, sir.

Q What do you do in those instances?'

A At that point and time, I make sure that the answer they wrote down is what they wanted and I give them the opportunity to change it or keep it the same.

Q What if they tell you that's what they meant?

A Then the interview ceases at that point and time.

Mr. Price: No further questions. Your Honor.

The Court: Cross.

Mr. Murphy (Cross-Examination)

Q Do you have the waiver of rights form in front of you?

A Yes, sir.

Mr. Murphy: Can I approach the witness?

Witness: You sure can. (Attorney approaches witness stand.)

Q This is the form that you guys went over; correct?

A Yes.

Q I want you to look under the Constitutional Rights Waiver; correct?

A Yes.

Q Now you already heard him read what the instructions are; right?

A Yes.

Q Someone can put yes or no; correct?

A Yes

Q this is the form that you give everyone before you speak to; correct?

A Yes.

Q Paragraph number three, "Do you wish to have an attorney at this time?" If someone writes "yes", what does that mean to you?

A At that point and time, it depends on the situation. At that point and time, well I'm not going to sit here and tell you that when they put yes that they want an attorney, because that's not true all the time.

Q I'm not asking you to read their mind. I'm just asking you to look at that document. Paragraph says, "Do you wish to have an attorney at this time?", and someone writes "yes". I mean, what does that mean? I'm not asking you to read anyone's mind. I'm asking you what that response to that question is.

A I can tell you that sometimes when they write yes, they mean no.

Mr. Murphy: Judge, can you direct him to answer the question?

The Court: No I can't-

Witness: - Your Honor, I can't answer

that question.

The Court: I think he's going to have to answer it as best he can. Do you understand the question?

Witness: Yes, sir.

Q So you're telling me that if someone writes do you understand I mean, "Do you wish to have an attorney at this time?" if someone writes "yes"-

A - what I'm telling you is, in this incident when she wrote "yes", I can tell you that she meant no. She did not mean yes. If she would have meant yes, we would have stopped the conversation; the statement would have stopped; we wouldn't have continued.

Q But she wrote "yes", correct?

A She wrote "yes".

Q She wrote, "Do you wish to have an attorney at this time?" She wrote "yes".

A That's true. That's true.

Q Okay. And then either you or Detective Williams then asked her, is this what she meant; correct?

A Yes. And she said no.

Q So after she had wrote "yes", you continued to question her; correct?

A No that's not true. She wrote "no", and then we continued to question her. If she would have said "yes", I want this answer to remain "yes", we would have stopped.

Q No. I'm asking you if she had wrote this answer "yes" to question number three; correct?

A Yeah.

Q And you asked her, is that what she meant.

A And she said no.

Q But I mean, you asked her a question after she had written "yes" next to that; correct?

A Yes. That's true.

Q Okay, So paragraph number three, she did write "yes".

A Yes.

Q Next to the question "Do you wish to have an attorney at this time?"

A That's true.

Q And you guys continued to question her.

A After she said "no". I understand what you're saying, but you're trying to - I can't sit here and answer to you, okay, that this individual meant this answer when she wrote it.

Q I'm not asking you to -

A - if you're asking me did she write "yes, I want an attorney", she wrote that down, the first answer, "yes".

Q I'm just saying when she first wrote "yes", you guys continued to talk to her; correct?

A Yes.

Mr. Murphy: I don't have any other questions.

Mr. Price: (Re-Direct Examination)

Q: Detective Litchford, if you really wanted to be deceptive about this, couldn't you just tear this form up, throw it away and start all over?

A That would be hiding something, sir, and we have nothing to hide. We don't destroy stuff like that.

Q So instead, you didn't do that, you crossed it out, but it would have been just as easy to say, "Now, Tiffany, let's start all over and do it right this time." But you don't do that, you're saying.

A No we don't.
Q Didn't do that in this case?
A No. I don't allow that as a supervisor.
Q And in fact one of the last things that Ms. Edmonds would have read before she signed it, is that bottom paragraph there that starts off, "I am signing this"- would you read that into the record. What does that say?
A What it says is that "I am signing this waiver voluntarily after being so advised of my Constitutional Rights and before any questions have been asked for me."
Q And in this case, did Detective Williams make her read that as well before she signed it?
A That's true. Yes, sir.

Mr. Price: No further questions, Your Honor.
The Court: Any further questions?
Mr. Murphy: I don't have any further questions.

THE COURT: Can I see that form? Sergeant Litchford, were you there with during the entire statement?
WITNESS: Yes, sir.
THE COURT: And by meaning the "entire statement", it was the reading of the rights form?
WITNESS: Yes,sir.
THE COURT: And where you there when she was advised of the right to have an attorney with her while she was being questioned?
WITNESS: Yes, sir.
THE COURT: And to acknowledge the reading of that right, does she do any physically?

WITNESS: Yes she does.
THE COURT: What's that?
WITNESS: She puts yes. What's she's asked is, you do understand you have the right to have an attorney present with you during questioning if you wish and she puts "yes", she understood that.
THE COURT: Do you want to take a look at this exhibit?

WITNESS: Yes, sir. I'm sorry. She initialed it. That's the top portion there. It says "You have a right to talk with an attorney and have him present with you while you're being questioned." Let me explain something, too. We don't only read this form, we also explain the Constitutional Rights to the person to make sure they understand it. I was with Detective Williams. After he said that, he took it a step further, and he advised her that what that meant was that if she wants an attorney present at this time, that she could have one. She indicated she understood that and she had placed her initials on the space provided.
THE COURT: So that when she answered question number three on the bottom, "Do you want an attorney at this time? And she said "yes", that would be indifference to the advertisement of number three up above where she put her initials.
WITNESS: Yes, that's true.
THE COURT: That's all the questions I have. Any follow-up?
Mr. Price: No, Your Honor.

Mr. Murphy: No.

THE COURT: Okay. You're excused.

(Witness complies and steps down from witness stand.)

Any other witnesses?

Mr. Price: No, Your Honor.

THE COURT: Do you wish to call any witnesses?

Mr. Murphy: No, Your Honor.

THE COURT: The Court is going to deny your Motion to Suppres. I would assume that's any statements that she made; right?

Mr. Murphy: That's the only statement; correct.

****

Mr. Price: Thank you, Your Honor. The State's next witness will be Detective Royce Williams, and during the course of his testimony, it's anticipated that there will be, in addition to some various photographic exhibits, we'll be getting into the issue of the tape-recorded statement that was given to Detective Williams and Detective Litchford by the defendant and that taped statement was subsequently transcribed as this Court is aware.....

Mr. Murphy: And Your Honor, just for the record, too, the redactions were based upon my Motions in Limine, and previously as the Court knows, I filed a Motion to Suppress and that was decided before the trial commenced, and since it's going to be introduced at this time, I would reiterate the same objection. I would make the same argument that I previously made, that it's inadmissible under the 5th

Amendment, and 6th Amendment of the United States Constitution. I would ask the Court to note a continuing objection throughout any statements or any testimony that Detective Williams gives regards to that statement. I would object to the admission of the statement, just for the record. I would like it to be noted as a continuing objection so I don't have to keep interrupting and stating my objection.

THE COURT: Okay. So noted.

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Mr. Price: Your Honor, we move to admit State's Exhibit 18 and publish.

Mr. Murphy: Just for the record, I would note the objection that I stated earlier.

THE COURT: Correct. Overruled. Will be admitted.

STATE OF INDIANA LAPORTE SUPERIOR
COURT NO. 1
COUNTY OF LAPORTE 2005 TERM

STATE OF INDIANA

vs CAUSE NO. 46D01-0312-FB-164

TIFFANY D. EDMONDS

VERDICT

"We, the Jury, find the Defendant Tiffany D. Edmonds, guilty of Criminal Confinement, a class B felony.

/s/_____
FOREPERSON"

Dated this 11th day of January, 2005.

STATE OF INDIANA LAPORTE SUPERIOR COURT NO. 1

COUNTY OF LAPORTE 2005 TERM

STATE OF INDIANA

Vs CAUSE NO. 46D01-0312-FB-164

TIFFANY D. EDMONDS

VERDICT

"We, the Jury, find the Defendant Tiffany D. Edmonds, guilty of Robbery, a class B felony.

/s/

FOREPERSON"